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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

THE PEOPLE,

Plaintiff and Respondent,

v.

PHILLIP BLAIR JONES,

Defendant and Appellant.

C060015

(Super. Ct. No. CM029300)

Defendant Phillip Blair Jones entered a negotiated plea of no contest to forcible oral copulation against young female family members (Pen. Code, § 288a, subd. (c)(2)),¹ admitted a special multiple victim enhancement allegation (§ 667.61, subd. (b)), and received a state prison term sentence of 15 years to life.

Defendant appeals, claiming the court's imposition of fines under section 290.3 violated the prohibition against ex post facto application of laws. Defendant also contends the trial

¹ Further unspecified statutory references are to the Penal Code.

court erred in stating at sentencing that this case involved "a lifetime parole commitment"; in fact, defendant will be eligible for parole by statute after 10 years. (§ 3000, subd. (b)(3).) The People concede both errors.

We agree; we shall modify the amount of the fine and otherwise affirm the judgment.

DISCUSSION²

I. The Section 290.3 Fine Must Be Reduced

At sentencing, the trial court imposed a \$300 sex offender fine pursuant to section 290.3. With corresponding penalties and surcharges, the fine attributed to this section totaled \$1,080.

Defendant contends the fine imposed by the trial court pursuant to section 290.3 violated constitutional proscriptions against ex post facto application of laws. The People concede the fine must be reduced, and we agree.

Section 290.3, subdivision (a), provides that a defendant must pay specified fines for violating offenses listed in section 290 (sexual offender registration). Forcible oral copulation is a crime listed in section 290. (§ 290, subd. (c).)

In 2000, when defendant committed the offense underlying his current conviction, the fines were \$200 for a first conviction and \$300 for each subsequent conviction.

² The issues on appeal do not require a recitation of the facts of the underlying offenses.

Section 290.3 was amended in 2006 to raise the fines to \$300 for a first offense and \$500 for each subsequent offense. (Stats. 2006, ch. 337, § 18, eff. Sept. 20, 2006.)

Under ex post facto principles, the amount of a fine is determined as of the date of the offense. (See *People v. Saelee* (1995) 35 Cal.App.4th 27, 30.) In this case, the trial court erred in imposing a \$300 fine; it must be reduced to \$200 in accordance with the provisions of section 290.3 in effect at the time defendant committed the offense, and the corresponding penalties and surcharges attributable thereto recalculated and recited. (See *People v. High* (2004) 119 Cal.App.4th 1192.)

II. The Period of Defendant's Parole Shall be 10 Years.

At sentencing, the trial court stated that defendant "will be on parole for a minimum of [three] years. Actually I think this is a life case. It will be a lifetime parole commitment"

We agree with the parties that the trial court was mistaken. Section 3000, subdivision (b)(3) provides that "in the case of any offense for which the inmate has received a life sentence pursuant to Section 667.61 or 667.71, the period of parole shall be 10 years." This error is not reflected on the abstract of judgment, and the issue of defendant's parole shall be determined by the Board of Parole Hearings. (§ 3000, subd. (b)(7).)

DISPOSITION

The judgment is modified to reduce the fine imposed pursuant to Penal Code section 290.3 to \$200. The trial court

shall recalculate the corresponding penalties and surcharges.
As modified, the judgment is affirmed. The trial court is
directed to amend the abstract of judgment accordingly and to
send a certified copy of the amended abstract to the Department
of Corrections and Rehabilitation.

BLEASE, Acting P. J.

We concur:

NICHOLSON, J.

BUTZ, J.